IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9439 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUNVANTBHAI AMBALAL PATEL

Versus

STATE OF GUJARAT

Appearance:
MR PRANAV G DESAI with MR NILESH A PANDYA for Petitioner.
MR UMESH TRIVEDI, ld.AGP for Respondents Nos.1 to 4.
MR MD PANDYA for Respondent No. 5

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.A.MEHTA

Date of decision: 14/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

The petitioner claims himself to be the owner of the land bearing Survey No.588/3 situated in village Harni of District Vadodara, admeasuring 7 acres 56 gunthas and 74 sq.mtr. According to the petitioner, this land is being used for the purpose of agriculture. The respondents had issued notification under Sec.4 of the Land Acquisition Act on 30th June 1991 declaring their

intention to acquire the petitioner's land along with other lands. According to the notification, the land was sought to be acquired for the purpose of Transport Nagar. According to the petitioner, there are other lands adjoining to the petitioner's agricultural land. It is also the case of the petitioner that the lands situated in village Harni of District Vadodara was designated in the final development plan sanctioned by the State Government in the year 1984 for Transport Nagar and according to him, the lands in question are not situated in the said area which is reserved for in the development plan for the Transport Nagar. The petitioner says that the land was designated in the development plan for the Transport Nagar to be acquired by the Vadodara Urban Development Authority; under Sec.20 of the Gujarat Town Planning and Urban Development Act, 1976; the Government was moved by the Vadodara Urban Development Authority and the notification was issued by the Government under Sec.4 and accordingly the notification under Sec.4 of the Land Acquisition Act was issued on 30th June 1991. The petitioner says that the land owners of the said lands situated in Harni approached the Vadodara Urban Development Authority and the State Government and requested that the notification under Sec.6 of the Land Acquisition Act may not be issued in respect of these lands which are designated in the development plan for Transport Centre. It is then said that under Sec.12(1) of the Gujarat Town Planning and Urban Development Act, a draft plan indicates the use of the land in the area covered by it and that it is to be regulated in the manner in which the development thereof is to be carried out. While referring to Sec.12(2) and sub-clause (b) and (k), it has been submitted that for the purpose of reservation of the land for the public purpose, the proposal for the reservation of the land for the Union and State, local authority or any other authority or body shall be in accordance with law for the time being in force. The petitioner has made reference to Sec.17 of the Act and it has been stated that the State Government has power to sanction draft development plan with or without modification which is submitted along with the general development control regulations which is accompanied with the development plan. The general development control regulations also specify the use of the land in various zones. It is also the petitioner's case that permissible built up area in the agricultural area is only 2% for the farm house and for other development, it is 5% of the area only and that in case of public and semi-public use, power is given to the competent authority to permit the development to the extent of 10% only. The petitioner's say is that he was

not affected by the draft development plan as his land was in the agricultural zone and the petitioner was doing agricultural operations himself. The petitioner's assertion is that the land in question was not designated for Transport Nagar in the draft development plan; that no acquisition was commenced or continued for the said lands designated in the development plan and the lands which are designated are in agricultural zone and for these lands, the acquisition proceedings had been initiated. The petitioner has alleged that the whole exercise by the State Government to initiate acquisition proceedings were arbitrary, discriminatory, violative of Article 14 of the Constitution of India. It is further the case of the petitioner that once the development plan is sanctioned, the same shall come into force on the dates specified in the notification and that as per Sec.17(3), the final plan is to be assigned to the concerned Area Development Authority and all other authorities situated in the area of the development plan. It is the grievance of the petitioner that without modification of final development plan, the Vadodara Urban Development Authority asked the State Government to acquire the land under Sec.20 of the Gujarat Town Planning and Urban Development Act, 1976; while the Vadodara Urban Development Authority had no power to request the State Government for proceedings under the Land Acquisition Act when the land is not reserved in the development plan for the purposes specified in Clauses (b), (d), (k), and (n) of sub-section (2) of Sec.12.

In nutshell, the case of the petitioner is that the public purpose specified in Sec.4 notification is for Transport Nagar of Vadodara Urban Development Authority and the said public purpose is mentioned in Clause (b) of sub-section (2) of Sec.12 of the Gujarat Town Planning and Urban Development Act, 1976 and thereby the Transport Nagar derives the nature of public purpose. If the land is not reserved for the public purpose in the final development plan, there is no authority in the Vadodara Urban Development Authority to request the State Government for acquisition of the land under the Land Acquisition Act and that the final development plan is binding. The petitioner's contention is that the public purpose derives from the Gujarat Town Planning and Urban Development Act, 1976 and if the lands in question are not reserved for the public purpose of Transport Nagar in the final development plan, there is no authority and power vested in the Vadodara Urban Development Authority for acquiring the land. The petitioner further states that before initiating the acquisition proceedings under the Land Acquisition Act, the approval of the final

development plan and/or scheme prepared by the Vadodara Urban Development Authority is necessary and it is incumbent upon the concerned authority before initiating the land acquisition proceedings, there should always be the development plan and/or scheme prepared and approved by the Vadodara Urban Development Authority. The petitioner than complains that no hearing was given to the objectors including the petitioner and without giving any opportunity of hearing and without considering the objections raised by the petitioner, the State Government issued the notification under the Gujarat Town Planning and Urban Development Act, 1976. That the entire exercise is colourable exercise of power and that only with a view to oblige the villagers of Khatambe under the pressure of the then MLA, the said lands were de-reserved and the lands of village Harni were included in the impugned notification in the revised final development plan and thus it was the reverse process which was followed by the State Government so as to oblige the then MLA shri Jaiswal.

2. The petitioner has also submitted that he had filed objection under Sec.5-A of the Land Acquisition Act and had contended that the land was not designated in the development plan for Transport Nagar and that the lands which were in fact designated in the development plan for Transport Nagar are not being acquired. The petitioner has averred that in the objections, an objection was also taken that the Air Force Station was situated near the land in question and therefore, it was not advisable to acquire the land near the Air Force Station; that the adjoining lands of 800 acres were already acquired for Cantonment and military base and therefore the lands under acquisition could not be acquired for the Transport Nagar. It has also been stated that there is a Gas Line going from village Ambaliyara and it was not possible to establish the Transport Nagar; that no land could be developed for any purpose other than the agricultural purpose as per the zoning regulations and as per the development plan. It is also submitted that the land in question is an agricultural land with good water potential and therefore, it was not advisable to acquire the land. A contention was also raised that under sub-section (2) of Sec.5-A of the Land Acquisition Act, it was incumbent upon the Land Acquisition Officer to give opportunity of hearing and then make a report in respect of the land which is sought to be acquired and notify for acquisition under Sec.4(1); that the copy of the said report shall be made available to the petitioner; that the inquiry under Sec.5-A of the Land Acquisition Act is an inquiry of quasi-judicial nature

and in the report under Sec.5-A the objections have to be dealt with and it must show that there is an application of mind. It is also stated that the purpose for which the land has been acquired is not a public purpose as contemplated under the Land Acquisition Act and the construction of Transport Nagar cannot be called a public purpose; that the Vadodara Urban Development Authority is interested to give the plots and sell the same to transporters and the same cannot be said to be a public purpose. The petitioner also says that the acquisition is violative of Article 19(1)(g) of the Constitution of India as good agricultural land is being acquired and that the acquisition proceedings are violative of Articles 21 and 300-A of the Constitution of India.

3. The petitioner has also challenged the notification under Sec.6 and it has been alleged that no publication of the substance of the declaration has been given in the locality in which the lands in question were situated and that the mandatory requirements of publication under Sec.6(2) of the Land Acquisition Act have not been followed. The petitioner has thus pleaded the violation of Sec.6 and 4. The petitioner has gone to the extent of telling that in fact the State Government does not need this land for the purpose of Transport Nagar as there is no such traffic in the said area. The petitioner has then made a reference to the Government of India's letter sent to the Chief Secretary, Govt. of Gujarat wherein it was given out that one of the installations of the Air Force is Harni Air Field near Vadodara in the State of Gujarat and no construction should therefore come up within 900 mtrs. periphery of any Air Force installation and the land in question belonged to the petitioner comes within the vicinity of 900 mtrs. from the periphery of the Air Force field and no construction can be made thereon.

4. On the premises as aforesaid, the notice dated 30th June 1991 at Annexure.B to the petition is sought to be quashed along with the notification under Sec.6 dated 9.12.1995 and a writ is sought for quashing the notification under Sec.17(1)(C) of the Gujarat Town Planing and Urban Development Act qua the lands of village Harni and that the notification dated 25th Oct.1996 qua the lands of village Harni be set aside. A declaration has also been sought that the land acquisition proceedings for the land in question at village Harni has lapsed under Sec.11-A of the Land Acquisition Act.

5. An affidavit-in-reply dated 20th Feb.1998 has

been filed on behalf of the respondents by the Special Land Acquisition Officer and the whole case of the petitioner has been denied. According to this affidavit - in-reply :(i) the proposal for acquisition of the land in question for Transport Nagar was received by the Vadodara Urban Development Authority on 1.5.1995 by the Collector, (ii) out of 20 Ha. of the land, the petitioner's land was required to be acquired for the same purpose, (iii) the Collector forwarded the proposal to the respondent no.3 (Land Acquisition Officer) on 2.5.1995, (iv) after making the necessary scrutiny, the notification under Sec.4 was published in Government Gazette on 4.5.1995, (v) through the process Surveyor, the notification came to be affixed at conspicuous part of village panchayat office on 20th Sept.1995, (vi) the notification was published and affixed on "Babool" tree on the very same day, i.e. 20th Sept.1995 and the notification was affixed on conspicuous place of the office of the Mamlatdar, (vii) the said notification was published on 3rd May 1995 in local newspaper "Lok-Satta" daily of Vadodara and also in other newspaper "Yugprabhav" on the very same day, (viii) No objections were received from the petitioner within 30 days and there was no question of hearing the petitioner under Sec.5-A of the Act, the necessary opportunity had been given to the petitioner, but nobody raised any objection and therefore ultimately the proposal was prepared under Sec.6 of the Act and the notification was accordingly issued under Sec.6, (ix) This notification under Sec.6 was also published in "Baroda Samachar" and also in "Lok-Satta" on 5.12.1995 and 6.12.1995 respectively. It was also published at the place of the land sought to be acquired and that in presence of panchas the notification under Sec.6 as well as Sec.9(1)(2)E(3)(4) was published at the place of acquisition on 9.1.1986 and the panchnama had also been carried out on the very same day, (x) The notice under Sec.6 had also been served upon the petitioner and necessary signatures were also obtained in token of the receipt of the same. The hearing was fixed on 29th January 1996 under Sec.9(3)(4) of the Act for interested land holders and that full opportunity was given to the petitioner to raise his objections and the draft award was forwarded to the State Government on 7.1.1997, (xi) On 27th Nov.1997, the draft award was sanctioned by the respondent no.1 and on 26th Dec.1997 the notice under Sec.11 was issued and served upon the concerned land holders including the petitioner and the award was declared on 31st Dec.1997 for compensation in case of Claim Petition No.21 of 1995 and on 5.1.1998, the notice under Sec.12(2) of the Act was served upon the petitioner by Registered Post Ack.Due.

5. We have gone through the pleadings and have heard learned Counsel for the petitioner and Mr.Umesh Trivedi, ld.AGP on behalf of the respondents nos.1 to 4 as also Mr.Mayur Pandya for respondent no.5. We find that in the facts of the present case, no ground is available to the petitioner for assailing the notifications either under Sec.4 or under Sec.6. In this case, the proceedings under the Land Acquisition Act are sought to be challenged. Admittedly, the land is being acquired under the provisions of the Land Acquisition Act as is the case of the Government. No rejoinder to the affidavit-in reply dated 20.2.1998 filed by has been filed by the petitioner. It is very clear that the opportunity has been given at all stages and in such matters it is for the respondents to decide as to for what purpose the land is sought to be acquired and for what purpose it is going to be used. The change of user in such cases is permissible and it cannot be said that the task of construction of Transport Nagar is not a public purpose. The notifications were published, the opportunity for objections was given and the decision was taken on the basis of the report. It is not the requirement of law that the copy of the report under Sec.5-A has to be made available to the persons whose land is sought to be acquired and after publishing the relevant notifications in more than one news papers as per the requirement, the decision was taken. The proceedings in such cases under the Land Acquisition Act can be initiated on the request of any functionary, but that does not entail any prejudice to the concerned party. In such cases, the other controversies with regard to violation of the rights etc. as have been alleged stand concluded by more than one judgment of the Supreme Court.

6. At this juncture, during the course of dictation of the order, Mr.Desai has submitted that the land belonging to the petitioner had never been shown as a land reserved for Transport Nagar in the development plan which had been prepared by the Vadodara Urban Development Authority in the agricultural zone and therefore the Vadodara Urban Development Authority itself had no authority to make a request for acquisition of this land to the Government for the purpose of Transport Nagar and consequently, there is no question of acquisition of this land for the purpose of Transport Nagar. Mr.Desai has also made reference to Sec.20 of the Gujarat Town Planning and Urban Development Act and has raised the argument that the Area Development Authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in

clause (b), clause (d), clause (k) or clause (n) of sub-section (2) of Section 12, may acquire the land either by agreement or under the provisions of the Land Acquisition Act, 1894 and in case the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894 are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisition, the designation of the land as aforesaid shall be deemed to have lapsed. He has submitted that it could not be a case for acquisition under Land Acquisition Act and if at all Vadodara Urban Development Authority required this land, it could be acquired in accordance with the provisions of the Gujarat Town Planning and Urban Development Act only. True it is that the Vadodara Urban Development Authority has not filed any reply whatsoever, but it is very clear in the reply filed on behalf of the State Government that out of the 20 Ha. of the land, the petitioner's land was also required to be acquired for the same purpose, i.e. the Transport Nagar. The Collector had forwarded the proposal of the Vadodara Urban Development Authority to the concerned Land Acquisition Officer on 2nd May 1995 and thereafter the necessary scrutiny was made and the notification under Sec.4 of the Land Acquisition Act, 1894 was issued. The pleadings in the affidavit-in-reply do indicate that the land in question must have been there for the purpose of Transport Nagar. Even if it is assumed for the sake of argument in absence of any reply on behalf of the Vadodara Urban Development Authority that this land in question was not specifically reserved for Transport Nagar, the question arises that when the acquisition proceedings are taken by the Government and the notifications have been issued under Sec.4 and 6 after the inquiry under Sec.5-A and after the scrutiny of the proposal as was made whether the acquisition can be held to be illegal and invalid on this ground alone? We do not find any substance in the submission made by learned Counsel for the petitioner that it could not be a case under the Land Acquisition Act. May be that the land has been acquired at the instance of the Vadodara Urban Development Authority nevertheless, the Government has proceeded to acquire this land on the basis of the proposal of the Vadodara Urban Development Authority under the provisions of the Gujarat Town Planning and Urban Development Act and the fact remains that it is a

case of acquisition under the provisions of the Land Acquisition Act. So far as the argument that the land in question was never reserved for Transport Nagar in the development plan, the question stands fully answered by the Supreme Court decision in the case of Bhagat Singh v. State of U.P. reported in AIR 1999 SC 435 wherein the Supreme Court has observed in no uncertain terms that there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area; nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality; the acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. Acquisition for a public purpose and obtaining permission from competent authority under the concerned Development Act for change of land use are different from one another and the former is not dependent upon the latter. The Supreme Court has conclusively opined that where under the Master Plan for the city the land which was proposed for acquisition was in an area where permitted use is for light industries, it cannot be held that in such a case, it would not be permissible to use the acquired land for purposes of establishing a market yard. Therefore, even if it is assumed that the land in question had not been shown reserved for Transport Nagar, it could not be acquired for the purpose of constructing the Transport Nagar. It admits of no controversy, in our opinion, that the Transport Nagar is certainly a matter which is for public purpose and even if there is a change of particular purpose, such change does not impinge upon the validity of the acquisition. Thus, the argument raised on behalf of the petitioner in this regard cannot be sustained and the same is rejected.

7. Besides this, we find from the record of this case that there is an affidavit dated 21st Dec.1999 by

the petitioner himself in which the petitioner has stated that the land in question was situated at village Harni bearing Revenue Survey No. 588/3 admeasuring 7-54-74 and that 12650 sq.mtrs. was required for development and construction of the four lane road project between Baroda and Halol and the work is carried out by Vadodara Halol Toll Road Co. Ltd. (VHTRL). In this affidavit, the petitioner has stated that he or his representative or legal heirs shall have no objection if VHTRL or any other representative of the contractor enters upon the aforesaid land for any kind of permanent or temporary work or fixture and that the petitioner had obtained a sum of Rs.8,26,111/- from VHTRL under the Rehabilitation Scheme vide Cheque No.332224 of Central Bank of India, Vadodara. Thus, this land in respect of which the petitioner has already received the compensation of Rs.8,26,111/- forms part of the same land which was sought to be acquired through the impugned notifications under Sec.4 and 6 of the Land Acquisition Act. It does not stand to reason as to how the notifications should be treated as valid for the limited purpose of this land of 12650 sq.mtrs. and the same notifications under Sec.4 and 6 should be treated to be invalid for the purpose of rest of the amount. Thus, the stand taken by the petitioner in this regard is absolutely inconsistent and suffers from an inherent contradiction. Learned Counsel for the petitioner has submitted that this affidavit was filed in some Civil Application in this Special Civil Application. That may be so. He may have filed the affidavit in the context of any Civil Application, nevertheless, the fact remains that this Civil Application was filed in this very Special Civil Application and the affidavit dated 21st Dec.1999 filed by the petitioner is on record in these very proceedings and in the file of Special Civil Application No.9439 of 1997 with which we are dealing.

8. Learned Counsel for the petitioner also raised an argument that the award which had been passed in this case was beyond the period of limitation because it was not passed within the period of two years from the date of notification under Sec.6. From the pleadings in the affidavit-in-reply dated 20th Feb.1998 filed by the respondent State, it is clearly made out from the contents of para 3, wherein it has been stated that in presence of panchas the notification under Sec.6 as well as 9(1)(2)E(4) was also published at the place of acquisition on 9.1.1996 and necessary panchanama to that effect was also carried out on 9.1.1996. For the purpose of computing the period of two years, the first terminal point has to be taken from the point of time when the

last publication is made. The date of the last publication in the instant case is 9.1.1996 and it has been categorically stated in the end of para 4 of this very affidavit-in-reply that the award was declared on 31.12.1997. Thus, from 9.1.1996, the award has been passed within a period of two years and hence the objection with regard to the time limit of two years as has been raised by learned counsel for the petitioner fails on the facts of this case and the same cannot be sustained. It was also given out by Mr.Umesh Trivedi, ld.AGP under instructions from the concerned officer who is present in the Court that the petitioner was called upon to receive the compensation in terms of this award dated 31st Dec.1997, but the petitioner himself did not turn up to take this amount of compensation nor he has otherwise challenged the validity of the award nor there is anything on record to show that this award dated 31st Dec.1997 has been made a subject matter of challenge in any proceedings by way of appeal or otherwise. In this view of the matter, we do not find any merit in this Special Civil Application. This Special Civil Application is hereby rejected. Rule is hereby discharged. Interim order dated 6.1.1998 which was continued upto 31st March 1998 on 23rd March 1998 and was never continued thereafter has already ceased to be operative and in any case ceases to be operative forthwith. No order as to costs.

(M.R. Calla, J.)

(D.A. Mehta, J.)

Sreeram.